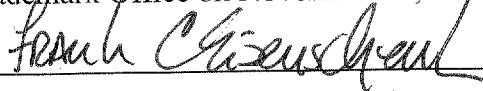


I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office on November 20, 2009.



Frank C. Eisenschenk, Ph.D., Patent Attorney

APPLICATION FOR PATENT TERM
ADJUSTMENT UNDER 37 CFR §1.705(b)
Examining Group 1649
Patent Application
Docket No. SER.109

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner : Christina M. Borgeest
Art Unit : 1649
Applicant : Mara Rossi
Serial No. : 10/581,172
Filed : May 31, 2006
For : Method for Purifying FSH

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 CFR §1.705(b)

Sir:

Applicant received a Notice of Allowance in the above-referenced patent application. Included with the Notice of Allowance was a “Determination of Patent Term Adjustment under 35 U.S.C. 154(b)” indicating that the subject application was entitled to 274 days of Patent Term Adjustment (PTA). Applicant respectfully asserts that the subject application is entitled to 501 days of Patent Term Adjustment, for the following reasons:

The subject application was filed as a national stage application pursuant to 35 U.S.C. §371 on May 31, 2006. The applicant fulfilled the requirements of 35 U.S.C. §371 for this application on February 6, 2007. A review of the PAIR record shows that the Patent Office apparently calculated the “B-delay” in the application based upon the February 6, 2007 date. However, a review of the relevant statutes and regulations shows that the actual date to be used with regard to the calculation of B-delay time-limits is the date on which national filing “commenced” pursuant to 35 U.S.C. §§371(b) and (f), *i.e.*, 30-months from the earliest claimed priority date. Furthermore, a recent Patent

Office decision in U.S. Patent No. 7,465,444 concurred that the filing date of an application filed under 35 U.S.C. §371 is the date of expiration of the applicable time limits under PCT articles 22(1) or (2), *i.e.*, the 30-month date.

The priority date claimed in the international application from which the subject national application was filed was December 22, 2003. Therefore, applicant asserts that the date on which national filing “commenced” in the subject application should be June 22, 2006.

Based upon this filing date of June 22, 2006, the applicant should have received a first action in this application no later than August 22, 2007. However, the first Action in this application was not mailed until December 12, 2008. This should have constituted a 477 day Patent Office delay.

Notwithstanding the above assertions, applicant puts forth the following argument that the actual filing date of the subject application is the date on which the application was received by the Patent Office. 35 U.S.C. 372(a) pertains to national stage requirements and procedures and states that:

(a) All questions of substance and, within the scope of the requirements of the treaty and Regulations, procedure in an international application designating the United States shall be determined as in the case of national applications regularly filed in the Patent and Trademark Office. (emphasis added)

Further, 35 U.S.C. 111(a)(4) pertains to the necessary documentation for receiving a filing date in a regular application and states that:

(4) . . . The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office. (emphasis added)

As such, 35 U.S.C. 21 states that:

(a) The Director may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Director. (emphasis added)

In view of the foregoing, it stands to reason that the filing date of a national stage application is the date on which the complete specification is deposited with the United States Postal Service, which for the subject application was May 31, 2006.

Bearing these facts in mind, we turn now to 35 U.S.C. §154 (b)(1)(A)(i)(I) which states that the term of the patent will be extended 1-day for each day after the end of the period in which the Patent Office failed to:

- (i) provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title not later than 14 months after
 - (I) the date on which an application was filed under section 111(a) of this title; . . .

In other words, based upon the filing date of May 31, 2006, the applicant should have received a first Action in this application no later than July 31, 2007. However, as mentioned above, the first Action in this application was not mailed until December 12, 2008. The applicant asserts that this should have constituted a 499 day Patent Office delay.

In either case, a review of the PAIR record shows that the Patent Office delay for mailing the first action, based upon 35 U.S.C. §154 (b)(1)(A)(i)(I), was determined to be only 250 days. In addition, the Notice of Allowance was mailed in this application on November 4, 2009, which constituted a further 24 day Patent Office delay, which is corrected noted in the record. There was no applicant delay in this application.

In view of the above discussion, the applicant respectfully submits that based upon the 30-month expiration date, this application is entitled to at least 501 days of total Patent Term Adjustment. However, the applicant further submits that, based upon the actual filing date of the application, the application should be entitled to 523 days of total Patent Term Adjustment.

The applicant respectfully requests that the record of this application be reviewed and corrected to ensure that the granted patent indicates the correct Patent Term Adjustment. This application is not subject to a terminal disclaimer.

Please charge the fee of \$200 for this Application for Patent Term Adjustment to Deposit Account No. 19-0065. Any additional fees as required by 37 CFR §§1.16 or 1.17 should be charged to Deposit Account No. 19-0065.

Respectfully submitted,



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